RFM 8/18/08

UNITED STATES DISCTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
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CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA
BY YAR DEPUTY

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| **UNITED STATES OF AMERICA,**<br>Plaintiff,<br>v.<br>**Marcelino Armando GUTIERREZ-Andrade**<br>Defendant. | Magistrate Case No.________<br>COMPLAINT FOR VIOLATION OF<br>Title 8, U.S.C., Section 1324(a)(2)(B)(ii)-<br>Bringing in Illegal Alien(s) for Financial Gain |

The undersigned complainant being duly sworn states:

**COUNT 1**

On or about **August 17, 2008**, within the Southern District of California, defendant **Marcelino Armando GUTIERREZ-Andrade**, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an aliens, namely, **Juana CALVARIN-Ramirez, Jorge SOTO-Carballo and Jesus HERRERA-Arceo,** had not received prior official authorization to come to, enter and reside in the United States, did bring to the United States said alien for the purpose of commercial advantage and private financial gain; in violation of Title 8, United States Code, Section 1324(a)(2)(B)(ii).

**COUNT 2**

On or about **August 3, 2008**, within the Southern District of California, defendant **Marcelino Armando GUTIERREZ-Andrade**, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, **Jalal Hassan El Hajj HASSAN**, had not received prior official authorization to come to, enter and reside in the United States, did bring to the United States said alien for the purpose of commercial advantage and private financial gain; in violation of Title 8, United States Code, Section 1324(a)(2)(B)(ii).

And the complainant states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

Claudia Rios

SIGNATURE OF COMPLAINANT
Claudia Rios, U.S. Customs and Border Protection Enforcement Officer

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 18th DAY OF **August, 2008**.

Barbara L Major

UNITED STATES MAGISTRATE JUDGE

08/17/08 WK

RFM 8/18/08

## PROBABLE CAUSE STATEMENT

The complainant states that **Juana CALVARIN-Ramirez, Jorge SOTO-Carballo and Jesus HERRERA-Arceo** are citizens of a country other than the United States; that said aliens have admitted they are deportable; that their testimony is material; that it is impracticable to secure their attendance at trial by subpoena; and that they are material witnesses in relation to this criminal charge and should be held or admitted to bail pursuant to Title 18, United States Code, Section 3144.

On 08/17/08 at approximately 3:40 PM, **Marcelino Armando GUTIERREZ-Andrade**, the Defendant, attempted to smuggle three undocumented aliens into the United States from Mexico at the San Ysidro Port of Entry via pedestrian primary. Defendant was observed by a Customs and Border Protection Officer giving verbal and physical instructions to a female and two male undocumented aliens approximately 50 feet south of the primary inspection booths. These three undocumented aliens were further observed attempting to gain entry into the United States by eluding inspection through pedestrian. These three undocumented aliens were apprehended and escorted into secondary. Defendant was then apprehended as he attempted to return south and escorted to secondary.

During the secondary inspection, the female and two males identified themselves as Juana CALVARIN-Ramirez, Jorge SOTO-Carballo, and Jesus HERRERA-Arceo (now referred to as material witnesses). All admitted to being citizens of Mexico with no legal documents to enter the United States.

At approximately 5:03 PM Defendant was advised of his Miranda Rights and chose to waive his right to counsel. Defendant gave the following statement: Defendant admitted picking the female and two males up in Tijuana, walking them to the port, then instructing them where and when to walk past the pedestrian primary officers. Defendant admitted he was going to receive a total of $2,300 for smuggling the three persons.

Defendant further admitted on 08/03/08 he accompanied his cousin in smuggling Jalal Hassan EL HAJJ HASSAN into the United States from Mexico at the San Ysidro Port of Entry in the same manner through pedestrian primary. Defendant admitted he was to receive $100 on that occasion. EL HAJJ HASSAN admitted to being a citizen of Venezuela with no entitlements to enter the United States.

Material Witnesses made the following statements during a videotaped interview. All Material Witnesses admitted being citizens of Mexico with no legal documents to enter into the United States. All Material Witnesses identified Defendant in a photo line-up as the person who assisted them in crossing into the United States through pedestrian primary. All Material Witnesses were returning to California to resume their residency and employment. Material Witnesses stated they were going to pay a smuggling fee ranging between $2,000 to $2,800 USD.